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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:) Chapter 11
)
VILLAGE RED RESTAURANT CORP.) Case No. 18-10960 (MEW)
D/B/A WAVERLY RESTAURANT)
) Hearing Date: December 11, 2018
Debtor) Hearing Time: 10:00 a.m.

NATIONAL LABOR RELATIONS BOARD'S LIMITED OBJECTION TO
DEBTOR'S AMENDED MOTION FOR (I) AN ORDER (A) APPROVING BIDDING
PROCEDURES; AND (B) SCHEDULING BID DEADLINE, AUCTION DATE, AND SALE
HEARING AND APPROVING NOTICE THEREOF; AND (II) AN ORDER APPROVING THE
SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS,
CLAIMS, INTERESTS, AND LIABILITIES

I. INTRODUCTION

The National Labor Relations Board (herein the "Board" or "NLRB"), an independent agency of the United States Government and a creditor in this matter, by and through its undersigned counsel, hereby files the instant Limited Objection to the Debtor's Amended Motion for (I) an Order (A) Approving Bidding Procedures; and (B) Scheduling Bid Deadline, Auction Date, and Sale Hearing and Approving Notice Thereof; and (II) an Order Approving the Sale of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims, Interests, and Liabilities, submitted to this Court by ECF on November 21, 2018 (herein "Amended Sale

Motion”)(Dkt. No. 27). The Board does not object to the Debtor’s Motion, but seeks to make clear the extent of its impact.

II. THE DEBTOR’S SERVICE OF ITS AMENDED MOTION IS DEFECTIVE AND CAUSED THE BOARD’S DELAY IN SUBMISSION OF THE INSTANT LIMITED OBJECTION

The Debtor’s service of its November 21, 2018 Amended Sale Motion, with Notice of Hearing on the NLRB, was incomplete, served upon a later date than represented by the Debtor to this Court, and is thus defective.

The Debtor filed its Amended Sale Motion to the Court on November 21, 2018, containing i) the Notice of Motion; ii) the Amended Sale Motion; iii) a proposed Bidding Procedures Order (“Exhibit 1”)(Dkt. No. 27-2); and proposed Bidding Procedures (“Exhibit A”)(Dkt. No. 27-3).

The Debtor represented to this Court that it served these documents on the Board, on “November 21, 2017 [sic],” by First Class Mail. (Dkt. No. 28). Contrary to the Debtor’s affidavit, the Debtor did not serve the Board until a week later, on November 28, 2018, as is plainly shown by the postmark date on the envelope containing the Amended Sale Motion. (Attached hereto as Board Exhibit A.) Consequently, the Board did not receive the Debtor’s Amended Sale Motion until the afternoon of Friday, November 30, 2018.

In addition, Debtor’s service omitted the proposed Signed Purchase Agreement between the Debtor and its landlord 135 Waverly Realty, LLC (“Exhibit B”)(Dkt. No. 27-4); the proposed Notice of Bid Deadline, Auction, and Sale Hearing (“Exhibit C”)(Dkt. No. 27-5); the proposed Sale Order (“Exhibit 2”)(Dkt. No. 27-6); and the Appraisal (“Exhibit 3”)(Dkt No. 27-7).

For this reason, and as a direct and foreseeable result of Debtor's material omissions and unreasonable delay in service, the Board was unable to comply with the December 4, 2018 submission deadline.

III. A Free and Clear Sale of Debtor's Assets does not Immunize a Future Operator of the Restaurant from Liability Pursuant to the March 20, 2018 Board Order in *Village Red Restaurant Corp. d/b/a Waverly Restaurant*

The Board concedes that a good faith purchaser of the Debtor's assets pursuant to a free and clear sale may take possession of those assets unencumbered. The Board, by the instant Limited Objection, seeks only to make clear that such a sale would not in itself immunize any future operator of the Debtor's business from potential liability pursuant to the Board's Order in *Village Red Restaurant Corp. d/b/a Waverly Restaurant*, 366 NLRB No. 42 (March 20, 2018).

Respectfully submitted,

/s/ Michael J. Bilik

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BOARD EXHIBIT A

MORRISON TENENBAUM PLLC
Counsel to the Debtor
87 Walker Street, Floor 2
New York, New York 10013
Phone: 212-620-0938
Lawrence F. Morrison, Esq.
Brian J. Hufnagel, Esq.

Hearing Date: December 11, 2018
Hearing Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: _____ X

Chapter 11

VILLAGE RED RESTAURANT CORP.
d/b/a WAVERLY RESTAURANT,

Case No.: 18-10960 (MEW)

Debtor. _____ X

**NOTICE OF DEBTOR'S MOTION FOR (I) AN ORDER (A) APPROVING
BIDDING PROCEDURES; AND (B) SCHEDULING BID DEADLINE,
AUCTION DATE, AND SALE HEARING AND APPROVING NOTICE
THEREOF; AND (II) AN ORDER APPROVING THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND
CLEAR OF LIENS, CLAIMS, INTERESTS AND LIABILITIES**

PLEASE TAKE NOTICE, that upon the annexed motion (the "Motion") dated November 21, 2018, Village Red Restaurant Corp. d/b/a Waverly Restaurant (the "Debtor"), by and through their undersigned attorneys Morrison Tenenbaum PLLC, will move this court before the Honorable Michael E. Wiles, United States Bankruptcy Judge, at One Bowling Green, New York 10004 on the 11th day of December, 2018, at 10:00 a.m. (prevailing Eastern Time) (the "Hearing Date"), or as soon thereafter as counsel may be heard, for an entry of an Order (a) approving bidding procedures (the "Bidding Procedures"), to be used for the sale (the "Sale") of substantially all of the Debtor's assets and related personal property (the "Purchased Assets") to 135 Waverly Realty, LLC for the sum of \$50,000.00 subject to higher and better offers, and the proposed Asset

¹ Any capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures.

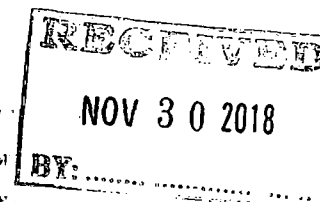
Purchase Agreement (the "Purchase Agreement") in conjunction therewith, (b) scheduling the bid deadline, auction date, and sale hearing and approving the form and manner of notice thereof, and following a subsequent hearing (the "Sale Hearing"), entry of an order (the "Sale Order") approving (a) the sale of the Purchased Assets under the Purchase Agreement to the prevailing bidder (the "Prevailing Bidder") to be determined at the Auction, free and clear of liens, claims and interests including the claims asserted by all creditors in this chapter 11 case including claims under the Federal and State labor laws, except for Assumed Liabilities and Permitted Encumbrances, (b) the Purchase Agreement and the obligations incurred by the Debtor and the Prevailing Bidder thereunder, and (c) granting related relief.

PLEASE TAKE FURTHER NOTICE that all response or objections, if any, to the Motion shall (i) be made in writing, (ii) conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York, (iii) set forth the basis for the objection and the specific grounds therefore, (iv) be filed with the Court with a copy delivered directly to the Chambers of the Honorable Michael E. Wiles, together with proof of service thereof, and (v) shall be served in a manner so as to be received not later than 5:00 p.m. on December 4, 2018 by Morrison Tenenbaum PLLC, 87 Walker Street, Floor 2, New York, NY 10013 (Attn: Brian J. Hufnagel, Esq.)

Dated: New York, New York
November 21, 2018

MORRISON TENENBAUM PLLC

By: /s/ Brian J. Hufnagel
Lawrence F. Morrison
Brian J. Hufnagel
87 Walker Street, Floor 2
New York, New York 10013
Tel.: (212) 620-0938
Counsel for the Debtor
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bjhufnagel@m-t-law.com



MORRISON TENENBAUM

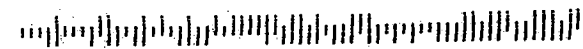
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AFFIDAVIT OF SERVICE OF:
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Date of Filing: December 7, 2018

I, the undersigned employee of the National Labor Relations Board, state under oath that, on the date indicated above, I served the above-referenced document by electronic mail upon the following persons, addressed to them at the following addresses:

Lawrence F. Morrison
Morrison Tennenbaum PLLC
Counsel for the Debtor
E-mail: lmorrison@m-t-law.com

Richard C. Morrissey
Office of the U.S. Trustee
E-Mail: Richard.morrissey@usdoj.gov

Date: December 7, 2018

Designated Agent: Michael J. Bilik, NLRB
Counsel to the General Counsel

/s/ Michael J. Bilik